

**United States Department of Labor
Employees' Compensation Appeals Board**

M.R., Appellant

and

**U.S. POSTAL SERVICE, ATOCHA STATION,
Ponce, PR, Employer**

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**Docket No. 12-822
Issued: November 14, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2012 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated September 9, 2011 and January 24, 2012 denying her claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained injury to her left knee causally related to her employment activities.

On appeal, appellant contends that OWCP erred in converting her claim from a recurrence of injury to a new claim and erred in ignoring that the employing establishment did not make reasonable accommodations with regard to her prior injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 30, 2010 appellant, then 44-year-old distribution and window clerk, alleged a recurrence of a January 11, 2006 left knee injury (OWCP File No. xxxxxx448), on November 9, 2010. She stopped work on November 15, 2010. Appellant contended that, when she returned to work after her original injury, she was restricted from bending, standing for long periods of time and heavy lifting. She also contended that she was not provided with proper job accommodations and that bending and throwing mail with prolonged standing at the window caused the recurrence of her injury. Appellant's supervisor responded that appellant did not have any accommodations or adjustments to her regular duties due to an injury-related limitation.

On January 12, 2011 appellant explained that on January 11, 2006 she sustained an injury to her left knee when a heavy box fell and stuck her left knee. She was treated and released to return to work on February 16, 2006 with restrictions from bending and lifting repetitively. Appellant had surgery on May 19, 2006, but the pain in her left knee continued and she was not provided with reasonable accommodation at work. She distributed letters and flats, which involved constantly bending and twisting from side to side. Appellant also stood for long periods of time while working the counter.

In a November 18, 2010 report, Dr. Derick E. Colon Lopez, a treating physiatrist, noted that appellant has been under his care intermittently since April 21, 2006 due to bilateral knee pain related to meniscal disease, rheumatoid arthritis and osteoarthritis. After reviewing appellant's medical records, physical examination and job description, he estimated that she should not perform any job higher than light job demand level and that this needed confirmation with a functional capacity evaluation. Dr. Lopez found that appellant could return to work with restrictions, including avoiding repetitive lifting, pulling and pushing greater than 20 pounds and should avoid prolonged static positions, walking or standing. In an attending physician's report dated December 21, 2010, he diagnosed lumbosacral radiculopathy and discogenic low back pain which he believed was an overuse injury caused by repetitive "truncal" motion and heavy lifting. Dr. Lopez stated that appellant's condition was severe enough to cause total disability for return to work or any other type of work. In a January 12, 2011 report, he opined that appellant has reached maximum medical improvement and that she could perform job duties at higher than a sedentary level.

By decision dated March 8, 2011, OWCP denied appellant's claim. It treated her notice of recurrence as a claim for a new injury as she claimed a condition due to her duties as a clerk. OWCP found that appellant failed to establish that her claimed medical condition was related to the established work events.

On March 28, 2011 appellant filed a request for reconsideration. No new evidence was submitted.

By decision dated April 19, 2011, OWCP denied appellant's request without conducting a merit review of the case.

On June 11, 2011 appellant again requested reconsideration. In support of her reconsideration request, she submitted an unsigned March 22, 2011 report from Dr. Lopez's office.

By decision dated September 9, 2011, OWCP denied modification of the prior decisions.

On November 3, 2011 appellant again requested reconsideration. She contended that her claim was for a recurrence of disability due to her left knee condition not a new injury. In a November 2, 2011 report, Dr. Lopez noted that appellant has been seen in his office since April 6, 2006 for discogenic low back pain, lumbosacral radiculopathy, carpal tunnel syndrome, osteoarthritis, knee chondromalacia, discogenic cervicgia and myofascial pain syndrome. He stated that he reviewed her medical records and concluded that these diagnoses were made and directly related to specific work-related incidents that either caused, exacerbated or aggravated her conditions. Dr. Lopez stated that the determinants used for direct causal relation include: causal event took place; appellant had impairment as a result of stated event; event could cause the condition; and event caused or contributed to the condition within medical probability. He stated that, after reviewing appellant's employment duties, job description and real life tasks, he advised appellant against returning to work. Dr. Lopez stated that he based his decision on appellant's permanent, degenerative, progressive conditions and high risk of injury to herself or others.

By decision dated January 24, 2012, OWCP denied modification of its earlier decision.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed conditions and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.²

ANALYSIS

While appellant filed a claim for a recurrence of disability, the Board finds that OWCP properly adjudicate her claim as a new occupational disease claim. She returned to work after her prior injury and attributed that her increased left knee pain to her employment duties after her return to work. Appellant described bending, throwing mail and daily prolonged standing, as contributing factors. As she implicated work factors that occurred after her return to her federal

² *Lourdes Harris*, 45 ECAB 545, 547 (1994); *A.P.*, Docket No. 11-1802 (issued April 10, 2012).

employment, her current claim was properly adjudicated as an occupational disease.³ The issue is not whether or not appellant's work restrictions were followed but rather whether the new employment duties caused or contributed to her left knee condition.

The Board finds that the medical evidence of record does not establish that appellant sustained an aggravation of her left knee condition as a result of the accepted factors of her federal employment. Dr. Lopez provided general statements attributing her numerous medical conditions, including knee chondromalacia, to her federal employment. He stated that he reviewed appellant's specific employment duties but did not provide any specific discussion with regard to her duties or medical rationale as to how the work duties aggravated her knee condition. In order to be considered rationalized medical evidence, an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and he must explain the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ The Board further notes that a medical restriction based on a fear of future aggravation due to employment exposure is not considered an injury under FECA and therefore no compensation can be paid for such a possibility.⁵

The Board thus finds that appellant has not met her burden of proof to establish causal relationship.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she suffered an injury to her knee causally related to her employment activities.

³ See *A.P., id.* Section 10.104 of OWCP's regulations provide that a notice of recurrence should not be filed when a new injury, new occupational disease, or a new event contributing to an already existing occupational disease has occurred. In these instances, the employee should file a Form CA-1 or CA-2. 20 C.F.R. § 10.404.

⁴ *M.S.*, Docket No. 12-141 (issued July 12, 2012).

⁵ *Carlos A. Marrero*, Docket No. 96-2186 (issued October 19, 1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2012 and September 9, 2011 are affirmed.

Issued: November 14, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board